

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KAVOUISE JACKSON,
Plaintiff,
v.
DR. FRANCISCO SANCHEZ, et. al.
Defendants.

Case No. 2:18-cv-02247-RFB-VCF

ORDER

1. INTRODUCTION

Before the Court for consideration is Defendant Sonya Carrillo's Motion for Summary Judgment, ECF No. 34.

II. PROCEDURAL BACKGROUND

This matter arises from a civil rights complaint pursuant to 42 U.S.C. § 1983 for a claim of deliberate indifference to a serious medical need against Defendant Dr. Francisco Sanchez and Sonya Carrillo during his incarceration at the Southern Desert Correctional Center (“SDCC”). Plaintiff alleges that a prior surgery required him to have clean bandages, antibiotic ointment, and saline water to treat an open wound and that Defendants deliberately denied him these necessary medical supplies.

Plaintiff filed a complaint, along with a motion to proceed in forma pauperis on November 21, 2018. ECF No. 1. On November 7, 2019, a screening order was filed, dismissing all claims and defendants except those described above. ECF No. 7. The case was referred to the Inmate Early Mediation program. ECF No. 10. Mediation ultimately failed. ECF No. 11. On February 7,

1 2020, an order granting the motion to proceed in forma pauperis was entered. ECF No. 13.

2 On April 6, 2020, Defendant Sonya Carrillo filed a motion for summary judgment. ECF
3 No. 18. On March 12, 2021, a hearing on that motion for summary judgment was held. ECF No.
4 31. At the hearing, the Court denied Defendant's Motion to Dismiss without prejudice. The parties
5 had until May 14, 2021 to complete discovery. Also at that hearing, the Court ordered Defendants
6 to produce all of Plaintiff's medical and grievance records by March 26, 2021. Plaintiff was
7 permitted to receive a copy of these records and keep that copy in his cell. The Court gave the
8 Plaintiff until April 5, 2021 to file an amended complaint. Parties then had until June 1, 2021 to
9 file dispositive motions. Responses to those motions were then due by June 22, 2021 and replies
10 by July 7, 2021.

11 No amended complaint was subsequently filed. On June 1, 2021, Defendant Carrillo filed
12 another motion for summary judgment. ECF No. 34. Plaintiff responded on August 9, 2021. ECF
13 No. 40. Defendant replied on August 23, 2021. ECF No. 41.

14 A written order on the motion for summary judgment follows.

15 III. FACTUAL BACKGROUND

16 a. Undisputed Facts

17 The Court finds the following facts to be undisputed. In July 2018, Plaintiff arrived at High
18 Desert State Prison with a gunshot wound to his left arm and elbow area. The gunshot wound
19 required surgery. During surgery, a metal rod was placed in Plaintiff's arm. After surgery, the
20 metal rod was visible and protruding from Plaintiff's skin.

21 Plaintiff needed clean bandages, antibiotics, and saline to keep the wound clean after
22 surgery. In August 2018, Plaintiff was sent to SDCC. When he arrived at SDCC, he asked to be
23 seen by Defendant Dr. Francisco Sanchez, the doctor at SDCC. Despite seeing the metal rod
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1 protruding from Plaintiff's arm, Defendant Sanchez denied Plaintiff's request for bandages.
 2 Defendant Sanchez also denied Plaintiff's request for pain management.
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4 While at SDCC, Plaintiff filed six grievances before filing the operative complaint. Two
 5 of the six grievances are applicable to the complaints in this case.
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7 The first is Grievance 20063071540. Plaintiff submitted emergency grievance
 8 20063071540 on August 28, 2018, at 11:30 a.m. Plaintiff wrote: "I was shot in my arm and I have
 9 a open wound with a metal plate that is sticking out. I do not have anymore bandages, saline,
 10 antibiotic ointment or a ace bandage to close off the wound." The facility denied the grievance
 11 stating "You will be seen by medical staff." Plaintiff checked the box "inmate agrees."

12 The second is Grievance 20063072477. Plaintiff submitted informal grievance
 13 20063072477 on September 19, 2018. Plaintiff wrote

14 I am grieving the fact that medical SDCC Department is denying me medical treatment
 15 and care, specifically, the bandages and ointment I need to keep the gunshot wound to the left arm
 16 protected and clean in open to avoid infection and inflammation. The SDCC medical department
 17 responded on 9/16/18 to my medical request (9/14/2018) for some bandages stating "do not see an
 18 order for bandages." . . . I've not had bandages provided since I left HDSP. The NDOC/SDCC
 19 handles medical issues for TLVCC inmates. I have not been giving [sic] any antibiotic, saline, or
 20 bandages for my gunshot would to my left arm. . . .the relief I seek is to have the SDCC medical
 21 staff provide me with a sufficient amount of antibiotic, ointment, and sterile water, on a weekly
 22 basis, so I can keep my injury clean from infection and inflammation during the healing process.

23 ECF No. 34-3. Defendant Carrillo was assigned to respond to this grievance. Defendant
 24 Carrillo responded, "According to your chart record you were issued band aids on 9/4/2018 – to
 25 get more supplies you will need to write a medical kite and be evaluated and each additional
 26 supplies will be a visit. Check the medical call out list to be called to medical to see a nurse."
 27 Jackson's grievance was denied. Jackson attempted to elevate the grievance to the first level for
 28 review on November 19, 2018: stating "I disagree because (1) I didn't receive any bandages on
 9/4/18. I receive bandages on 11/1/2018 from Nurse Sonya; (2) I stand by the claims in my
 informal grievance that I'm not getting the proper and adequate treatment and care for my serious

1 medical [sic].” This grievance was denied for “missing documentation” by an unknown member
 2 of staff that was not Defendant Carrillo. The document advised Plaintiff to correct that deficiency
 3 and re-submit his first level grievance. Plaintiff did not pursue this grievance any further. On
 4 November 21, 2018, Plaintiff filed the instant lawsuit.
 5

6 **b. Disputed Facts**

7 Plaintiff contends that the following facts are genuine issues of material fact, requiring this
 8 case to go to trial: (1) “whether the Plaintiff, considering his particular circumstances, has
 9 adequately exhausted administrative remedies that are available to him,” (2) “whether the
 10 procedure for the exhaustion of administrative remedies is presented in a manner that is available
 11 to the Plaintiff,” (3) “whether the Plaintiff can present sufficient admissible evidence pointing to
 12 the Defendant’s personal participation in the constitutional violations against the Plaintiff,” (4)
 13 “whether the Defendant knew or should have known, that her actions or inactions against the
 14 Plaintiff were in violation of clearly established law.” ECF No. 40.
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16 **IV. LEGAL STANDARD**

17 Summary judgment is appropriate when the pleadings, depositions, answers to
 18 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
 19 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
 20 Fed. R. Civ. P. 56(a); *accord Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The substantive
 21 law governing a matter determines which facts are material to a case. *Anderson v. Liberty Lobby*,
 22 477 U.S. 242, 248 (1986).

23 When considering the propriety of summary judgment, the court views all facts and draws
 24 all inferences in the light most favorable to the nonmoving party. *Gonzalez v. City of Anaheim*,
 25 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the nonmoving party “must
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1 do more than simply show that there is some metaphysical doubt as to the material facts Where
 2 the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,
 3 there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original)
 4 (internal quotation marks omitted).

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 6 It is improper for the Court to resolve genuine factual disputes or make credibility
 7 determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th
 8 Cir. 2017) (citations omitted).

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10 **V. DISCUSSION**

11 Defendant Carrillo argues that she is entitled to summary judgment because Plaintiff failed
 12 to properly exhaust his available administrative remedies, because there is no genuine dispute of
 13 material fact that Defendant Carrillo did not personally participate in the alleged constitutional
 14 violation, and because she is entitled to qualified immunity. Plaintiff argues that NDOC’s
 15 grievance procedures were not “available” to him, see Ross v. Blake, 578 U.S. 632, 642, and
 16 therefore he should be excused from administratively exhausting his claim. He also contends that
 17 there is a genuine dispute of material fact as to whether Defendant Carrillo personally participated
 18 in the violation of Plaintiff’s rights because of his allegations and that she is not entitled to qualified
 19 immunity.

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21 **a. The Eighth Amendment Claim**

22 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
 23 the violation of a right secured by the Constitution or laws of the United States, and (2) that the
 24 alleged violation was committed by a person acting under color of state law. See West v. Atkins,
 25 487 U.S. 42, 48 (1988).

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1 Plaintiff argues that Defendant's conduct violates the Eighth Amendment. The Eighth
 2 Amendment prohibits the imposition of cruel and unusual punishment and "embodies broad and
 3 idealistic concepts of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429
 4 U.S. 97, 102 (1976) (internal citations omitted). A prison official violates the Eighth Amendment
 5 when he acts with "deliberate indifference" to the serious medical needs of an inmate. Farmer v.
 6 Brennan, 511 U.S. 825, 828 (1994). In order to establish this violation, two requirements must be
 7 met: (1) objectively, the official's act or omission must be so serious such that it results in the
 8 denial of the minimal civilized measure of life's necessities; and (2) subjectively, the prison official
 9 must have acted unnecessarily and wantonly for the purpose of inflicting harm. See Id. at 834. In
 10 order to meet the subjective prong of the Eighth Amendment test, a prison official must have a
 11 "sufficiently culpable state of mind." Id. To satisfy the subjective prong, a plaintiff must show "(a)
 12 a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm
 13 caused by the indifference." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). "Indifference
 14 may appear when prison officials deny, delay, or intentionally interfere with medical treatment, or
 15 it may be shown by the way in which prison physicians provide medical care." Id. (internal
 16 quotations omitted). When a Plaintiff alleges that the delay of medical treatment evinces deliberate
 17 indifference, the prisoner must show that the delay led to further injury. See Shapley v. Nevada
 18 Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985) (holding that "mere delay of
 19 surgery, without more, is insufficient to state a claim of deliberate medical indifference").

20 Here, the undisputed facts demonstrate that Defendant Carrillo did not act out of
 21 "deliberate indifference" to a serious medical need or with a "sufficiently culpable state of mind."
 22 Plaintiff alleges that, despite his numerous medical request forms, Defendant Carrillo was
 23 responsible for directing medical staff at SDCC and TLVCC to deny these requests. However, the
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1 undisputed facts in the record indicate that Defendant Carrillo was responsible only for denying a
 2 single informal grievance, on the basis that at least a portion of Plaintiff's request had already been
 3 fulfilled. Further, she gave him instructions on the proper procedure for procuring additional
 4 supplies through a medical kite (rather than the informal grievance process), if needed. See ECF
 5 No. 34-4. These undisputed facts do not support subjective culpability for an Eighth Amendment
 6 "deliberate indifference" violation. The undisputed facts show that there was no "purposeful. . . ."
 7 failure to respond to a prisoner's pain or possible medical need." Jett, 439 F.3d at 1096. Instead,
 8 Defendant Carrillo timely responded to a grievance based on the information she had and
 9 explained to Plaintiff the proper procedure for procuring further supplies or medical attention, if
 10 needed.
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12 Further, Plaintiff has not submitted evidence or identified facts in the record showing the
 13 existence of a genuine issue of material fact regarding Defendant Carrillo's alleged Eighth
 14 Amendment violation during the period of time that precedes the filing of his complaint in federal
 15 court.¹ See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Plaintiff, instead, relies on the
 16 allegations in his original complaint, which is not sufficient to raise a genuine dispute at this stage
 17 in the case. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-587 ("When
 18 the moving party has carried its burden under Rule 56(c), its opponent must do more than simply
 19 show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule,
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25 ¹ In his declaration in opposition to Defendant's Motion for Summary Judgment, Plaintiff includes
 26 multiple allegations against Defendant Carrillo submitted through grievances that occurred after
 27 filing his complaint on November 21, 2018. See ECF No. 40. The Court gave Plaintiff an
 28 opportunity to amend his complaint on March 12, 2021 in order to potentially include those facts
 or allegations. See ECF No. 31. Plaintiff declined to amend. Therefore, these elements of
 Plaintiff's declaration which contain facts or allegations that occurred after November 21, 2018
 are not properly considered by this Court in determining whether Defendant Carrillo committed a
 violation of the Eighth Amendment.

1 the nonmoving party must come forward with specific facts showing that there is a genuine issue
2 for trial.”) (internal citations omitted).

3 Accordingly, the undisputed facts indicate that Defendant Carrillo did not commit a
4 violation of the Eighth Amendment in denying Plaintiff’s grievance. Summary judgment is
5 therefore granted for Defendant Carrillo.

7 **VI. CONCLUSION**

8 **IT IS THEREFORE ORDERED** that Defendant Carrillo’s Motion for Summary
9 Judgment (ECF No. 34) is GRANTED in full consistent with this order.

10 The Clerk of the Court is directed to enter judgment in favor of Defendant Carrillo.

12 **DATED:** March 27, 2022.



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14 **RICHARD F. BOULWARE, II**
15 **UNITED STATES DISTRICT JUDGE**

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